(1)

Supreme Court, U.S.
FILED

04-750 NOV 30 2004

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

ENOCH E. GOULD,

Petitioner.

v.

TIMOTHY FAVER, ET AL.,

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

District Court has refused Petitioner mandatory disclosures, scheduling hearing, and discovery in civil rights case brought under 42 U.S.C. 1983 and 42 U.S.C. 1985 (3), and has threatened sanctions should Petitioner raise complaint of rule violations that prejudices the case against him.

1. Is Federal Rule of Civil Procedure, Rule 26(f) a mandate to all the parties to case, or is Rule 26(f) simply a suggestion to parties, and does District Court or Magistrate Court have wide discretion to disannul Rule 26(f) and other Federal Rules of Civil Procedure or District Court Local Rules in prejudice to party?

2. Is Federal Rule of Civil Procedure, LR Rule 16.2(a) a mandate to the District Court, or is it simply a suggestion, and is it appropriate for District Court Judge or Magistrate Judge to refuse to bring LR Rule 16.2(a) hearing in Civil Rights case in violation to Federal Rules of Civil Procedure and District of Minnesota Local Rules?

3. Does District Court have wide discretion to ignore U.S. Supreme Court decisions?

PARTIES TO THE PROCEEDINGS

Enoch E. Gould,

Plaintiff and Petitioner

Timothy Faver, in his official capacity as Beltrami County Prosecutor, Randall R. Burg and David P. Frank, in their official capacities as Assistant Beltrami County Prosecutors, Joseph J. Gould, Jeannine Gould, Winfield W. Gould, Michael M. Gould, Samuel S. Gould, Stephen S. Gould, Judy Gould, Peter P. Gould, Elaine Gould, Roland L. Sarratt, Frank Fann, Douglas Ferrier, and Ryan K. Kieson,

Defendants and Respondents

CORPORATE DISCLOSURE STATEMENT

No parties are corporations. Sup. Ct. R. 29.6.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The magistrate Court's opinion (per Erickson, R.) precluding petitioner from Discovery and Disclosures of private defendants on immunity grounds (Appendix ("Pet. App.") 4a-7a) is not otherwise published. The district court's opinion (per Rosenbaum, J), (Appendix ("Pet. App.") 2a-3a). The Eighth Circuit court of appeals' order (per Riley, Smith, and Murphy) denying Petitioner's petition for a writ of mandamus without opinion (Appendix ("Pet. App.") 1a) is not otherwise published.

STATEMENT OF JURISDICTION

The Court of Appeals, Judges Riley, Smith, and Murphy, entered its mandate denying petitioner's petition for a writ of mandamus without opinion on November 17, 2004, See (per Riley, Smith, and Murphy) (Appendix ("Pet. App.") 1a), and docket # 103, (Case No. 04-3702). Petitioner invokes this Court's Jurisdiction under 28 U.S.C. 1254(1) and 28 U.S.C. 1343(1), (3), (4), for praying for Writ of Certiorari.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First Amendment of the U.S. Constitution Provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fifth Amendment of the U.S. Constitution provides: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fourteenth Amendment of the U.S. Constitution provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

Title 42, Section 1983 of the United States Code provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and

laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983 (2000)

Title 42, Section 1985 (3) of the United States Code provides: "Depriving persons of rights or privileges
If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws;"

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*

"[i]f one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

STATEMENT OF THE CASE

Petitioner Enoch E. Gould's, hereinafter "Petitioner", now deceased counsel filed a civil rights action, on March 5, 2004, See docket # 1, (Case No. CV-04-01125 JMR/RLE), against the private Defendants Winfield W. Gould, Michael M. Gould, Samuel S. Gould, Stephen S. Gould, Judy Gould, Peter P. Gould, Elaine Gould, Joseph Gould, Jeannine N. Gould, and Douglas Ferrier, hereinafter known as "Private Defendants" and other private Church of Christ (Temple Lot) officials and missionaries in charge of the State of Minnesota, Respondents Roland Sarratt and Frank Fann, hereinafter known as the "Church Officials", wherein Petitioner's Complaint alleges the Respondents surnamed Gould and Ferrier, with the authorization and direction of the Church Officials, in conjunction with direct involvement of three State employees, under the color of law, County Attorney Timothy Faver, Assistant County Attorney David Frank and Assistant County Attorney Randall Burg, known hereinafter as "State Defendants" to have conspired to deprive Petitioner of his freedom of religion, privacy, safety and property rights by harassment, force and fraud. Wherein Petitioner claims that the three State Defendants took overt actions in support of the Private Defendants and Church Officials religious conspiracy to deprive Petitioner of his constitutional rights protected under the First, Fifth and Fourteenth Amendments, which Petitioner asserts that the unlawful actions of the Church Officials and the Conspirator Defendants are actionable under the provisions of Civil Rights Act of 1871, namely 42 U.S.C. 1985(3), and the wrongful and unlawful actions and inaction's of the State Defendants are actionable under 42 U.S.C. 1983 for declaratory and injunctive relief, where one of the State Defendants Timothy Faver has attempted to prosecute, and has basically threatened future prosecution of Petitioner, for no unlawful action(s), in

support of the Private and Church Officials Conspiracy, where Petitioner was a victim of a violent vehicular assault where Petitioner was dragged and run down by Respondent Joseph Gould, with a full size pickup while Joseph called Petitioner "satan" and following an "evil spirit", in overt actions in furtherance of the religious conspiracy. Petitioner has made claim that Defendant Joseph Gould and his Attorney-at-Law Respondent Ryan K. Kieson together with other parties yet unknown, conspired to unlawfully influence the outcome of a property partition case brought by Petitioner in state court, which conspiracy also involved the illegal actions of a 9th District Court Judge, having secret meetings to decide the case, which conspiracy Petitioner claims is actionable under the provisions of Civil Rights Act of 1871, namely 42 U.S.C. 1985(3) against the private Defendants as the Judge would likely have immunity and, therefore, has not been named in Petitioner's Complaint as a Defendant. Petitioner claims that he is a member of a class that has historically been persecuted, plundered, and sometimes even murdered because of that class's refusal to submit to the forceful, unlawful, and sometimes deadly acts of a group of persons, such as the Private and Church Official Respondents, forcing a religious doctrine taught by the late Mormon Prophet Joseph Smith Jr. known as the "Consecration Law", which requires a person to deed all of his/her property to the "Church" or received grave harassment and sometimes fatal vengeance, which class is "readably discernible" historically and contemporaneously, especially in news articles of such persecution and harm up to and including murder. Petitioner also made request of the Federal District Court to hear State claims of defamation, interference with property rights, and assault and battery.

1. On or around May 26, 2004, shortly after Petitioner's counsel passed away, the Court, via Magistrate Judge Erickson's judicial assistant, Ms. Vicki Miller, held a telephone conference to set a date for the Magistrate Judge to hear dispositive motions, where no dispositive motions existed, with no Order from the District Court Judge to do so, where Magistrate Judge Erickson had no authorization on the docket to schedule timing to bring dispositive motions, and without agreement from the parties that the Magistrate Judge could hear dispositive motions, in violation to L.R. 7.1(b) and L.R. 72.1 (g) (3). Ms Miller provided only a one (1) day telephone notice to the parties of such telephone conference. The telephone conference was held "without" or "*ex-parte*" to one of the parties as the Court overlooked one of the Pro Se Defendants in violation to judicial canon and local rules.

2. Petitioner strongly objected to the scheduling of dispositive motions hearing preceding a proper Rule 26 (f) Conference of the Parties, and without mandatory disclosures and a mandatory LR Rule 16.2(a) scheduling conference being scheduled. Petitioner made his objections to the Clerk, previous to, See docket # 101, (Case No. CV-04-01125 JMR/RLE), during, and directly following that telephone conference, which objections were completely ignored by Ms. Miller and the Court. Ms. Miller set the date for the hearing of dispositive motions for September 16, 2004, and obtained all of the parties counsel's agreement that they understood that they would have to bring their dispositive motions timely to be heard on that date, Petitioner still strongly objecting to the scheduling of such before Rule 26 (f) and LR Rule 16.2(a) conference had been scheduled.

3. On June 4, 2004, Petitioner contacted Ms. Miller

by phone, and informed her that he needed a LR Rule 16.2(a) conference to be scheduled so that he could schedule a Rule 26 (f) conference 21 days previous to such with the other Parties. Ms. Miller refused any date and stated that the pre-trial conference notice comes from the Court, and that she issues the pre-trial conference notices once a month, and that she would issue one when all the answers were in from the Defendants, See docket # 101, (Case No. CV-04-01125 JMR/RLE). However, no such notice has ever been forthcoming. Petitioner made follow-up correspondence to the Court on June 8, 2004.

4. On July 20, 2004, Petitioner submitted request to the respective counsels and Pro Se Parties for Rule 26 (f) conference and requested for ADR, See docket # 33, (Case No. CV-04-01125 JMR/RLE).

5. On or about, July 25, 2004, Attorney Scott Anderson, of Ratwik, Roszak & Maloney, P.A., counsel for the State Defendants, sent a letter in response to Petitioner's request, refusing to attend any Rule 26 (f) conference, and suggested to all other Parties' counsel that they should basically do the same, (Pet. App. a), Mr. Anderson's letter is in violation to Local Rule[1]. Mr. Anderson wrote that Magistrate Judge Erickson has failed to issue a pre-trial Order. Magistrate Judge Erickson's failure in his ministerial duties is a violation to the Local Rule 16.2 (c)[2].

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1 - Local Rule LR 26 (f) (1) (B) states: "Failure by a party to attend a Rule 26 (f) meeting of parties pursuant to this rule shall subject such party to such sanctions under Rule 37 (a) (4) as the Court may deem appropriate."

2 - Local Rule 16.2 (c) which states in pertinent part "A pretrial schedule shall be issued in every case....", also Petitioner's case has not been

6. On August 2, 2004, See docket # 58, (Case No. CV-04-01125 JMR/RLE), Petitioner submitted to the Court an affidavit that described at minimum the discovery that would be needed to allow Petitioner to answer the motions for dismissal or in the alternative for summary judgment and asked the Court to refrain from hearing such dispositive motions until the minimal discovery was completed. Petitioner described what information was needed, and how that information would assist Petitioner in answering the dispositive motions, with no harm or prejudice to Defendants. On or around the same time frame, Petitioner again made request to the Parties and the Court for Rule 26 (f) and Rule 16.2 (c) conferences with no response from either, See docket # 57, (Case No. CV-04-01125 JMR/RLE).

7. On or around August 2, 2004, Defendants' counsel for the State Defendants brought motion dismissal or in the alternative for summary judgment. Counsel for the Church Officials Mr. Darsow, and Counsel for Mr. Kieson, that is Mr. O'Niel also submitted dispositive motions on behalf of their clients.

8. Regardless to the Respondents' attempt to evade Fed. R. Civ. P. 26 (f) Meeting of the Parties, and Fed. R. Civ. P. 26 (a) (1) (E), Initial Disclosures, Petitioner provided Initial Disclosures to all parties in keeping with the Rules, See docket # 29, 32, and 37 (Case No. CV-04-01125 JMR/RLE).

9. Petitioner, failing to have any disclosures or

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allowed Local Rule 16.1 (d) Alternative Dispute consideration.

discovery from the Respondents that he needed to make opposition to the dispositive motions, still timely filed, the best he could without discovery, opposition memorandums to all 5 motions, and within the page limitations for such set by the local rules of 35 pages, See docket # 61-68 (Case No. CV-04-01125 JMR/RLE).

10. At the conclusion of all 5 opposition memorandums, filed by Petitioner, Petitioner again pleaded with the Court for minimum discovery, so that proper opposition could be made to each dispositive motion, seeing that Rule 16.2 (c) conference was being prevented by the Court, See docket # 84 (Case No. CV-04-01125 JMR/RLE).

11. On or about September 7, 2004, just 9 days before the set hearing on dispositive motions, Attorney Paul A. Kief, on his client's behalf, brought an amendment to his dispositive motion, and served with the amendment a 55 page memorandum in violation to LR 7.1 (b) (3) (c), and in violation to LR 7.1 (b) (1)[3], which amended motion had improper notice of motion required by LR 7.1 and no proposed order as required by LR 7.1 (b) (1) (E). Attorney Kief did not get leave of the Court to make a late amendment, nor did he get leave to surpass page limitations as required by LR 7.1 (b) (3) (c) at or before submission.

12. On or about September 7, 2004, Defendant Joseph Gould brought a reply memorandum and affidavit and

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3 - Local Rule 7.1 (b) (1) "No Motion shall be heard by a district judge unless the moving party files and serves the following documents . . . . at least 45 days prior to the hearing: (A) Motion (B) Notice of Motion (C) Memorandum of Law (D) Affidavits and Exhibits (E) Proposed Order*"

a couple of exhibits, in reply to Petitioner's opposition memorandum, but did not provide a service notice of such, also, the reply memorandum did not speak to his motion, and he still did not provide a proposed Order in violation to LR 7.1(b) (1) (E).

13. On or about September 7, 2004, filed on October 18, 2004, Petitioner wrote Judge Rosenbaum, the District Court Judge assigned to the case, concerning the above violations to local Rules, and that no disclosures under Fed. R. Civ. P. 26(a) (1) (E) or the LR 16(a) Scheduling Hearing had been made by the Court to date, and served a copy of such with the Court and all Parties to the case, See docket # 101 (Case No. CV-04-01125 JMR/RLE). Petitioner received no answer to such to date from any.

14. The hearing on the dispositive motions was heard by Magistrate Judge Erickson, in violation to local rules, where Petitioner argued for disclosures and discovery that he needed to even properly make opposition to the dispositive motions and was strongly rebuffed by Magistrate Judge Erickson, See docket # 89 (Case No. CV-04-01125 JMR/RLE) however, Magistrate Judge Erickson stated that he would consider Petitioner's August 2, 2004 affidavit as a Rule 56 request for discovery, but stated that he would hold off of any consideration for discovery until a determination had been made on State Defendants' request for immunity, even though Judge Erickson admitted, in Court to Petitioner, that the State Defendants' Counsel could not provide any legal support for their request for immunity, and where in the hearing, Mr. Anderson, the State Defendants' counsel admitted to such. Petitioner also showed that one of the State Defendants, Timothy Faver, had perjured himself in his

affidavit supplied to the Court, and showed thorough documentation that it was likely that a second of the State Defendants also perjured himself, both bringing such perjury to prevent Petitioner's discovery requests. Petitioner argued that the motions brought by Attorney Kief and Pro Se Defendant Joseph Gould were improperly before the Court and could not be heard according to Local Rules, where Petitioner was abraded and chided by Magistrate Judge Erickson, where Magistrate Judge Erickson stated that he was not going to allow anyone to tell him what could and could not be heard by his Court. Judge Erickson provided no hint of sanction for their wrongful motions and even allowed them oral argument, in tension to local rule recommendations. Petitioner argued that regardless to the immunity issue dealing with the State Defendants, the private defendants have no immunity, and therefore disclosures and discovery should be allowed with the private Defendants, but Petitioner was rebuffed again, and the Court held that no discovery would be allowed until the State Defendants' immunity issue was settled, which is clearly in violation to U.S. Supreme Court[4] decisions, or in other words violation to law.

15. On September 20, 2004, Magistrate Judge Erickson filed an Order (Appendix ("Pet. App.") 4a-7a) which Order by Magistrate Judge Erickson basically provided

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4 Additionally, while the Supreme Court in *Dennis v. Sparks*, 449 U.S. 24, 30, 101 S.Ct. 183, 66 L. Ed.2d 185 (1980), did hold that a judge was immune from suit based on conspiracy, the Court found that private parties who had conspired with the judge were not. The court even anticipated that the judge might possibly have to testify about his actions--inaction for which he was immune--inorder to establish the conspiracy. Also, See *Robert D. Mastronianni v. Micheal J. Bowers, et al*, a decision of the 11th Circuit quoting Dennis v. Sparks.

four items: 1) Petitioner was later found to be correct about Mr. Joseph Gould's and Attorney Kief's filed motions, that they were not proper before the Court at the time of the hearing, and that they did violate the Local Rules for timeliness; 2) Petitioner would be allowed discovery if his case survived the dispositive motions, depending upon the immunity issue with the State Defendants; 3) No sanctions, for Mr. Joseph Gould's and Attorney Kief's violations to local rules, were even suggested by the Magistrate's Order; 4) The Order also gave Petitioner 20 more days to re-answer Attorney Kief's and Mr. Gould's motions, but again without the discovery needed to do so. Petitioner was given until October 12, 2004 to re-answer the Motions, and was told that he would not be held to the page limit rule.

16. Petitioner again filed timely opposition memorandums in opposition to the dispositive motions filed by Defendant Joseph Gould and the amended motion filed by Attorney Paul Kief on behalf of his clients, See docket # 98-99 (Case No. CV-04-01125 JMR/RLE)Petitioner still being without the discovery needed, and again requested disclosures and Discovery in accordance to local Rules.

17. On or about September 29, 2004, Petitioner appealed Magistrate Judge Erickson's, September 20, 2004 Order, See docket # 88-90 (Case No. CV-04-01125 JMR/RLE), among the issues made in the appeal was that Petitioner had still not been allowed disclosures and discovery as required by Fed. R. Civ. P. 26 (f) and L.R. 16.2 (a) scheduling hearing, nor had Petitioner been allowed discovery on the Private and Church Official Defendants as directed by U.S. Supreme Court decision, *Dennis v. Sparks*, 449 U.S. 24, 30, 101 S.Ct. 183, 66 L. Ed.2d 185 (1980), See

footnote 4 above.

18. On or around October 20, 2004, Chief Judge Rosenbaum denied Petitioner's valid appeal as "[f]rivolous and utterly without merit" and then went on to threaten Petitioner with sanctions should he bring any other "[f]rivolous appeals". And further threatened to sanction: "Any violation will result in appropriate sanctions" (Appendix("Pet. App.") 2a-3a).

19. On or about October 28, 2004, Petitioner made petition for writ of mandamus to the U.S. Eighth Circuit Court of Appeals which also raised issues of the Court's violations as described in 17 above, and on November 17, 2004, the Eighth Circuit (Appendix("Pet. App.") 1a) denied Petitioner's writ with no opinion.

REASONS FOR GRANTING THE WRIT

Mandamus is only appropriate when the claim is "clear and certain and the duty of the officer is ministerial and so plainly prescribed as to be from doubt." *Giddings v. Chandler*, 979 F2.d 1104, 1108 (5th Cir. 1992).

I. Certiorari Is Warranted Because The District Court Has Refused Its Ministerial Duties To Bring L.R. Rule 16.2 (a) Scheduling Hearing, Plus, The Eighth Circuit Has Sanctioned The District Court's Error, By Refusing Petitioner's Writ Of Mandamus.

Petitioner's counsel filed this instant case on or about March 5, 2004 on behalf of Petitioner and then shortly after

passed away. Since then, Petitioner has sought the District Court to bring its scheduling hearing mandated under L.R. 16.2 (a) and (c). Rule 16.2 (a) states that a scheduling hearing will be scheduled by the District Court no later than 90 days after the first responsive pleading in keeping with the Fed. R. Civ. P. 16[5]. It is now a few days short of 8 months since the first responsive pleading, and the Court has failed to bring the scheduling hearing for this case as mandated in LR Rule 16.2 (a). When Petitioner brought this issue, previous to and within Petitioner's appeal of Magistrate Erickson's Order, dated September 20, 2004, See (Appendix ("Pet. App.") 4a-7a), of which the District Court, Judge James Rosenbaum made threat of sanction of Petitioner to further make complaint concerning such, stating that Petitioner's appeal was "[f]rivolous and utterly without merit", See (per Rosenbaum, J), (Appendix ("Pet. App.") 2a-3a).

II. Certiorari Is Warranted Because The District Court Has Sanctioned The Respondents' Evasion Of Fed. R. Civ. P. 26 (a)(1)(E) And 26 (f), Plus The Eighth Circuit Has Sanctioned the District Court's Error, By Refusing Petitioner's

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5 **LR 16.2 (a) PRETRIAL CONFERENCES**

"(a) In every case, not exempted by LR 26.1(d), the Court shall schedule an initial pretrial conference, pursuant to Fed. R. Civ. P. 16, for the purpose of adopting a pretrial schedule. The initial pretrial conference shall be held within 90 days after the first responsive pleading is filed ...." "No later than 14 days before the scheduled initial pretrial conference, the parties shall meet as required by Fed. R. Civ. P. 26(f) and LR 26.1(f). If the case is not settled at the Rule 26(f) meeting, the parties shall, within 10 days of the meeting, file with the Court the joint report of the meeting. The joint report shall be made in the form prescribed in Form 3, "Rule 26(f) Report".

Writ Of Mandamus.

According to Fed. R. Civ. P. 26 (f)[6] the Parties are mandated to meet together to discuss issues dealing with developing a case schedule recommendation to be submitted to the Court, at the L.R. Rule 16.2 (a) scheduling hearing, and to attempt to resolve as many of the case facts as possible at that meeting, and provide disclosures, or to provide timing for when such disclosures would take place between the parties, and to discuss any Alternative Dispute Resolution possibilities (ADR). The Parties are also required to provide Initial Disclosures under Fed. R. Civ. P. 26 (a) (1) (E) which the Respondents have also refused to provide to date, however, Petitioner is in compliance to this rule. When Petitioner made written request for a Rule 26 (f) Meeting of the Parties, Counsel for Respondents Timothy Faver, Randall R. Burg, David P. Frank (Appendix ("Pet. App." 8a-10a) and Counsel for Ryan K. Kieson sent letters to Petitioner refusing to partake in such meeting. All other Respondents and their Counsels evaded Petitioner's request which is in violation to Fed. R. Civ. P. 26 (f) (1) (B)[7] which states that the sanctions

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6 **FED. R. CIV. P. RULE 26(F)**

"Meeting of Parties; Planning for Discovery

Except in categories of proceedings exempt from initial disclosures under Rule 26(e)(1)(E) or when otherwise Ordered, the parties must, as soon as practicable and in any event at least 21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b) confer to consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by Rule 26(a)(1), and to develop a proposed discovery plan that indicates the parties' views and proposals."

7 **Fed R. Civ. P 26 (f) (1) (B)**

"Failure by a party to attend a Rule 26 (f) meeting of parties pursuant to this rule shall subject such party to such sanctions under Rule 37(a) (4) as

Rule 37 (a) (4) is appropriate in such refusal by the Respondents. When Petitioner raised the issue at the District Court level, Judge Rosenbaum stated that Petitioner's complaint was "[f]rivolous and utterly without merit", See (per Rosenbaum, J), (Appendix ("Pet. App.") 2a-3a), and threatened Petitioner with sanctions should he raise such issue again in appeal. It is instructional to review the Advisory Committee notes concerning Fed. R. Civ. P. 26 Disclosures and Meeting of the Parties when considering if the District Court has wide discretion for evading such or has discretion to sanction the Respondents' evasion of the Fed. R. Civ. P. 26[8] mandate. When considering such it is clear that the Advisory Committee did not allow the modification of Fed. R. Civ. P. 26 by the U.S. District Courts.

III. Certiorari Is Warranted Because The District Court Does Not Have Discretion To Evade Supreme Court Precedent, And The Eighth Circuit Has Sanctioned The District Court's Error By Refusing Petitioner's Writ Of Mandamus.

Magistrate Judge Erickson has made Order that Petitioner will not be allowed mandated disclosures and discovery of private Respondents, until the State Defendants in civil rights case immunity issue has been determined. Petitioner has stated, in appeal to the District Court, that even if State Defendants are immune, Petitioner still has rights to

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the Court may deem appropriate."

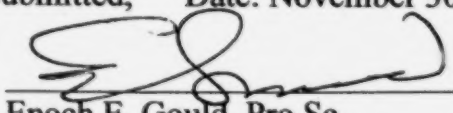
8 "(5) The 2000 Amendments to the Federal Rules of Civil Procedure removed the authority for local rule exemptions from the 26 (f) meeting requirement. Thus, those exemptions have been removed from the local rule."

move ahead with mandated disclosures and discovery of the private defendants as they can have no immunity, and even if the State Defendants are found to have immunity, that does not prevent Petitioner from moving forward with the private Respondents, Petitioner relied on *Dennis v. Sparks*, 449 U.S. 24, 30, 101 S.Ct. 183, 66 L. Ed.2d 185 (1980), See footnote 4 above, in support of his argument. Petitioner appealed the Magistrate's Order to the District Court who sanctioned the Magistrate's Courts Order, and threatened Petitioner with sanctions should he make such appeal in the future, See (per Rosenbaum, J), (Appendix ("Pet. App.") 2a-3a), Petitioner then sought Writ of Mandamus to resolve the issue, however, the Eighth Circuit sanctioned the District Court's error and denied Writ, See (per Riley, Smith, and Murphy)(Appendix ("Pet. App.") 1a). For the Magistrate and District Court and now Eighth Circuit Court of Appeals to sanction the evasion of Supreme Court case law is clear error, and meets the requirement for Writ of Certiorari.

CONCLUSION

The District Court's failure in its ministerial duties is in tension with the Fed. R. Civ. P., the District of Minnesota Local Rules, and Supreme Court decisions. Therefore, this Court's review is warranted, and, therefore, Petitioner prays this Court for its order granting Writ of Certiorari.

Respectfully Submitted, Date: November 30, 2004



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APPENDIX

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 04-3702
In re: Enoch Gould, *
Petitioner *
*
* Petition for Writ
* of Mandamus
*

JUDGMENT

Petition for writ of mandamus has been considered by the court and is denied. (5360-010199)

November 17, 2004

Order Entered at the Direction of the Court:
s/Michael E. Gans
Clerk, U.S. Court of Appeals, Eighth Circuit.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
04-CV-1125 (JMR/RLE)

Enoch E. Gould	)	
	)	
v.	)	ORDER
	)	
Timothy Faver et al.	)	

Plaintiff appeals the September 20, 2004, Order [Docket No.86] issued by the Honorable Raymond L. Erickson, United States Magistrate Judge. Plaintiff's appeal is timely pursuant to Local Rule 72.1 (b) (2).

The Court has reviewed the matter and finds the appeal frivolous and utterly without merit. No portion of the Magistrate's Order is clearly erroneous or contrary to law.

Accordingly, IT IS ORDERED that:

1. Plaintiff's appeal [Docket No. 88] is denied.

2. The parties are hereby apprised the the Court will scrupulously enforce the Local Rules -- including page limitations. Any violation will result in appropriate sanctions.

3. Further frivolous appeals will also result in appropriate sanctions.

Dated: October 20th, 2004

s/James M. Rosenbaum
JAMES M. ROSENBAUM
United States Chief District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

* * * * * * * * * * * * * *

Enoch E. Gould

Plaintiff,

vs. ORDER

Timothy Faver, Randall R. Burg,
David P. Frank, Joseph J. Gould,
Jeannine Gould, Winfield W. Gould,
Michael M. Gould, Samuel S. Gould,
Stephen S. Gould, Judy Gould,
Peter P. Gould, Elaine Gould,
Roland L. Sarratt, Frank Fann,
Douglas Ferrier, and Ryan K. Kieson

Defendants. Civ. No. 04-1125 (JMR/RLE)

* * * * * * * * * * * * * *

I. Introduction

On September 16, 2004, we heard argument on the Motion of the Defendants Winfield W. Gould, Michael M. Gould, Samuel S. Gould, Stephen S. Gould, Judy Gould, Peter P. Gould, Elaine Gould, and Douglas Ferrier ("Defendants") to Dismiss.[1]

The Plaintiff appeared on his own behalf, and the Defendants appeared by Paul Kief, Esq.

1The Hearing on September 16, 2004, also included multiple Motions by the other Defendants, including a Motion to Dismiss by the Defendants Timothy Faver, Randall R. Burg, and David P. Frank; a Motion to Dismiss by Joseph J. Gould, a Motion to Dismiss by Roland L. Sarratt and Frank Fann; and a Motion to Dismiss by Ryan Kieson.

The Court also heard argument on the Plaintiff's request that we decline to consider the Defendants' Motions to Dismiss until the Plaintiff conducted discovery. In an Affidavit filed on August 3, 2004, the Plaintiff attested to his interest in pretrial discovery. As we related at the time of the Hearing, given the pendency of pretrial Motions to Dismiss, which were predicated on immunity grounds, construed the Plaintiff's Affidavit as falling within the meaning of Rule 56(f), Federal Rules of Civil Procedure, although it was not denominated as such. If we ultimately conclude that the Motions predicated on immunity grounds require discovery on the Plaintiff's part, such discovery will be allowed to proceed. As we noted, at the Hearing, the defense of qualified immunity encompasses a freedom from litigation, as well as from liability for those acts which are protected by the immunity. Hunter v. Bryant, 502 U.S. 224, 227 (1991); Siegert v. Gilley, 500 U.S. 226, 232 (1991); Anderson v. Creighton, 483 U.S. 635, 646 n. 6 (1987); Mitchell v. Forsyth, 472 U.S. 511, 526 (1985); Engle v. Townsley, 49 F.3d 1321 (8th Cir. 1995).

At the time of the Hearing, the Plaintiff urged that we not hear argument on the Defendants' Motion to Dismiss, because it was not filed until September 7, 2004. We were under the misapprehension that the Defendants' most recent filing was an amended version of a previous filing and, in that, we were wrong. Accordingly, we will not consider the Defendants' Motion to Dismiss until we have allowed the Plaintiff to submit a supplemental response to that

Motion and, consistent with Local Rule D. Minn. LR7.1, we grant the Plaintiff twenty (20) days, from the date of this Order in which to respond to the Defendants' Motion. Upon our review, we find that the same good cause should allow the Plaintiff an opportunity to respond, in writing, to the Motion to Dismiss of the Defendant Joseph J. Gould ("Gould"), who also appeared pro se, as Gould's Affidavit, in support of that Motion was not timely filed. Following the receipt of the Plaintiff's responsive memoranda, if any are filed, we will consider the advisability of further oral argument on the two noted Motions.[2]

NOW, THEREFORE, It is-

ORDERED:

That the Plaintiff's request for additional time to respond to Defendants Motion to Dismiss is GRANTED, and the Plaintiff shall have until **October 12, 2004**, in which to respond to the Motion

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2 As we noted, at the time of the Hearing, the Defendants' memorandum also substantially exceeded the page limitation specified in our Local Rules. Accordingly, we will not hold the Plaintiff to that page limitation.

to Dismiss of the Defendants Winfield W. Gould, Michael M. Gould, Samuel S. Gould, Stephen S. Gould, Judy Gould, Peter P. Gould, Elaine Gould, and Douglas Ferrier, and of the Defendant Joseph J. Gould.

BY THE COURT:

Date: September 20, 2004

s/Raymond L. Erickson
Raymond L. Erickson
UNITED STATES MAGISTRATE JUDGE

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Attorneys at Law

July 23, 2004

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RE: *Gould v. Faver, et al*
Our File No. 1070-0588

Gentlemen;

This letter is written to each of you in response to the plaintiff's letter of July 20 suggesting a Rule 26(f) meeting be held. I do not believe it would be

appropriate to have the meeting at this time.

Generally, my experiences with Magistrate Judge Erickson are that he issues, at a time he feels appropriate, an order for pretrial. In that order, the parties are directed to meet and confer to come up with the proposed schedule that would need to be set forth as part of a Rule 26(f) conference. The order then also requires the proposed pretrial order, in a form attached to the order, be submitted to the court two or three weeks in advance of the scheduled pretrial before the magistrate judge.

Magistrate Judge Erickson has not issued such an order in this case. It is quite clear to me that the reason he has done so is that all of the defendants are intending to move for dismissal. This is based upon, for the most part, the pleadings in the case. Until such time as there has been a ruling on these motions, I think it would be a waste of the time of all of the parties in this matter to sit down and set forth a pretrial schedule and deal with all of the matters that are set forth under Rule 26(f). The absence of any order from Magistrate Judge Erickson directing this to occur at this time is evidence that the court is well aware of what may happen on these motions. What Mr. Gould is asking would in fact cause the parties to this case to incur hundreds if not thousands of dollars in what may be needless expense and wasted time and effort.

If in fact the motions that are currently scheduled to be heard in September are granted, then that is the end of the matter and a Rule 26(f) conference never need be conducted. If the motions are not granted, in whole or in part, then there will be

more than adequate time to conduct this conference. There is no scheduling order in this case. I am quite certain that the magistrate judge does not anticipate the need for one until such time as the court has decided which defendants, if any, are proper parties to this litigation.

Anyone else who feels the need to weigh in on this issue in a letter may feel free to do so. However,

I would say that on behalf of my clients, I am not going to take part in a Rule 26(f) conference prior to a decision on the motions that are scheduled for September in the absence of any court order that would require me to do so.

Respectfully submitted,

s/Scott T. Anderson
Scott T. Anderson